No. 85-203

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1985

BARBARA M. SIMS,

Petitioner,

against

HONS. LAWRENCE H. COOKE, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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Question Presented

Did the district court have subject matter jurisdiction over an action brought solely to overturn a decision of the highest court of a state to sustain disciplinary charges against a judge and to remove her from the bench?

Parties

Barbara M. Sims is the only petitioner. Her petition identified as respondents the Honorables Lawrence H. Cooke, Matthew J. Jasen, Hugh R. Jones, Sol Wachtler, Bernard S. Meyer, Richard D. Simons and Judith S. Kaye. At the time the action was commenced in the district court, Judge Cooke was chief judge of the New York Court of Appeals and Judges Jasen, Jones, Wachtler, Meyer, Simons and Kaye were the associate judges.

After the notice of appeal to the Second Circuit was filed, Chief Judge Cooke and Judge Jones retired. Associate Judge Sol Wachtler was appointed Chief Judge and Fritz W. Alexander, II, was appointed Associate Judge effective January 1, 1985. Because the judicial defendants were sued in their official capacities only (Complaint ¶ 11, Appendix 22a), Chief Judge Wachtler and Judge Alexander were automatically substituted as defendants-appellees in the Second Circuit pursuant to Rule 43(c)(1), Fed. R. App. P. The Second Circuit's decision did not reflect the substitution. Thereafter, Vito J. Titone was appointed to the remaining vacancy as associate judge.

Because respondents had been sued only in their official capacities, the current members of the New York Court of Appeals were therefore automatically substituted for their predecessors pursuant to Rule 40.3 of the Rules of this Court. The petition is thus mistaken in listing as respondents (Petition at 1) the former members of the court.

Finally, while the petition states that the action is moot against the Commissioners of the Board of Elections of Erie County, New York (Petition at 1 n.1), who were defendants in the district court, the action has never been terminated as to them.

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Opinions Below

The opinion of the Second Circuit is reprinted at pages 1a to 3a of petitioner's Appendix. The decision and order of the district court denying petitioner's motion for a preliminary injunction and denying respondents' cross-motion to dismiss the complaint is reprinted at pages 4a to 9a. The opinion of the district court granting respondents' motion for reargument and dismissing the complaint, delivered

orally from the bench, is reproduced at pages 10a to 17a. No opinion in this case has been reported.

The determination of the New York Court of Appeals, which petitioner sought to have the district court review, is reported at 61 N.Y.2d 349, 474 N.Y.S.2d 270, 462 N.E.2d 370, *rearg. denied*, 62 N.Y.2d 943, 479 N.Y.S.2d 1028, 468 N.E.2d 56 (1984).

Jurisdiction

The decision of the Second Circuit was rendered on May 7, 1985, and no rehearing was sought. Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1254, presumably under subsection (1) thereof.

Statutory Provision

Section 1257, 28 U.S.C., provides as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in

question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Statement of the Case

Petitioner was an Associate Judge of the City Court of Buffalo, New York (Appendix 18a-19a).* In 1979, the New York State Commission on Judicial Conduct commenced an investigation into certain allegations of improper conduct made against petitioner (28a) and eventually issued a formal written complaint charging her with eleven separate

* In reproducing her complaint in the appendix to the petition, petitioner has deleted three paragraphs relating to the process by which petitioner's vacant judicial seat was to be filled. The remaining paragraphs of the complaint were renumbered to obscure the omissions.

Paragraph 12 of the original complaint identified the Commissioners of the Erie County Board of Elections, who were also defendants below. Original paragraph 38, between the paragraphs now numbered 36 and 37, alleged that the mayor of Buffalo appointed an interim associate judge of the city court, after petitioner's removal, to serve until the next general election. And original paragraph A of the Remedies section of the complaint sought a preliminary and permanent injunction against "Defendant Board of Elections" from holding any election or filling the judicial seat formerly occupied by petitioner until the final determination of this action.

Because petitioner's omissions from the complaint in her appendix here are immaterial at this stage, references herein to the complaint refer to the version contained in petitioner's appendix rather than to the original.

acts of judicial misconduct (29a).* After a full evidentiary hearing at which petitioner testified and presented evidence on her own behalf (33a), the appointed referee found that ten of the charges against petitioner were established by the evidence and that the eleventh was not (33a). The Commission on Judicial Conduct thereafter determined, as had the referee, that ten of the charges against petitioner had been proven and her misconduct established (35a). The Commission censured petitioner for her misconduct (*id.*).

Petitioner then sought review of the Commission's determination by the New York Court of Appeals, "sitting as a court" (35a). Upon its review of the record, the Court of Appeals, "sitting as a court" (36a), found that all eleven charges of misconduct against petitioner had been supported by the evidence (*id.*). 61 N.Y.2d 349, 474 N.Y.S.2d 270, 462 N.E.2d 370, *rearg. denied*, 62 N.Y.2d 943, 479 N.Y.S. 2d 1028, 468 N.E.2d 56 (1984). In evaluating Judge Sims' conduct, the New York Court of Appeals, in its opinion, wrote of the recurring representation by her lawyer-husband of defendants who had appeared before her:

> "The unmistakable impression to be gathered from this conduct was that petitioner and her husband were acting as a team, that because of the Judge's prior as-

* The Commission on Judicial Conduct was created by N.Y. Const. art. VI, § 22, ¶ a. to "receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform or performance of official duties of any judge or justice of the unified court system." Review of a determination of the Commission may be had only in the New York Court of Appeals, *id.*, which is required to review the Commission's findings of fact and conclusions of law on the record of the proceedings upon which the Commission's determination was based. *Id.* ¶ d. The Court of Appeals may impose a less or more severe sanction than the one determined by the Commission. *Id.* See N.Y. Judiciary Law §§ 41, 44 subds. 7, 9.

> sociation with some of the defendants and because of her husband's relationship to her, special favor and consideration could be obtained in the courts through retention of the Judge's husband." (61 N.Y.2d at 355).

The Court of Appeals rejected the Commission's determined sanction of censure and directed that petitioner be removed from the bench (36a).

Petitioner never sought review in this Court, by writ of certiorari, of the decision and final order of the Court of Appeals. Instead, together with several voters who had voted for her election as a judge (21a), she commenced this action under the Civil Rights Act, 42 U.S.C. §§ 1981, 1983 and 1985 (23a-24a). They invoked federal jurisdiction pursuant to 28 U.S.C. § 1343(3) and (4) (23a).

By this action, petitioner sought, *inter alia*, a preliminary and permanent injunction directing respondents to "rescind and vacate" (54a) the order of the New York Court of Appeals which removed her from her judicial post and directing them to restore her to her judgeship with back pay and benefits (*id.*). Petitioner also sought a corresponding judgment declaring that it was "constitutionally impermissible" (55a) for respondents to remove her, as well as an award of attorney's fees. Petitioner sought no other relief against respondents.

Petitioner moved for a preliminary injunction which sought to enjoin respondents "mandatorily" to "rescind and vacate" (58a-59a) the final order of the Court of Appeals which had removed her from her judicial position and to restore her to that position with full back benefits (59a). Respondents opposed the motion and cross-moved to dis-

miss the complaint, asserting that the district court lacked subject matter jurisdiction (60a). The district court denied the motion and the cross-motion (4a).

Respondents thereafter timely answered the complaint, denying its material allegations (67a). At the same time, they moved for reargument of the district court's decision and order (63a). The district court granted reargument of respondents' motion to dismiss (13a) and held that the court lacked subject matter jurisdiction over petitioner's claim (*id.*). Accordingly, it directed the entry of an order of dismissal (17a).

On appeal, the Second Circuit affirmed unanimously (1a). "Because Sims requested the district court to review the decision of the New York Court of Appeals," the Second Circuit wrote (3a), "the district court properly dismissed her complaint for lack of subject matter jurisdiction."

Petitioner, who never sought review in this Court of the decision removing her from the bench, now asks this Court to review the decision of the Second Circuit affirming dismissal of her attempt to seek collateral review from the district court.

Reasons for Denying the Petition

The Second Circuit, in Unanimously Affirming Dismissal of the Complaint for Lack of Subject Matter Jurisdiction, Applied Law Already Settled by this Court, and its Decision does not Conflict with the Decision of any other Federal Court of Appeals.

Petitioner's argument here consists of an attempt to transform the decision of the Second Circuit into a holding that her complaint did not state a "justiciable cause of action" (Petition at 7). However, the court of appeals unanimously, and expressly, held that the district court "properly dismissed [petitioner's] complaint for lack of subject matter jurisdiction" (3a).* In her effort to reconstruct that decision here, petitioner completely ignores the one ground on which the Second Circuit wrote its decision.

Section 1257, 28 U.S.C., vests in this Court the jurisdiction to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." Such jurisdiction, this Court has established, is exclusive. *District of Columbia Court of Appeals* v. *Feldman*, 460 U.S. 462 (1983); *see also Zimmerman* v. *Grievance Committee*, 726 F.2d 85, 86 (2d Cir.), *cert. denied*, —— U.S. ——, 104 S. Ct. 2681 (1984). As a result, it is settled that the district courts lack subject matter jurisdiction to review the decisions of the highest court of a state. *Id.*; *see also Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923); *Tang* v. *Appellate Division, First Department*, 487 F.2d 138, 141 (2d Cir. 1973), *cert. denied*, 416 U.S. 906 (1974).

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* The Second Circuit, without further detail, also noted that it had "carefully reviewed [petitioner's] other claims" (3a) and found them to be without merit. *Id.*

Hence, the Second Circuit followed established law in affirming dismissal of petitioner's complaint for lack of jurisdiction. As the court of appeals recognized (Appendix 2a-3a), the complaint sought an injunction directing respondents to "rescind and vacate" the New York Court of Appeals decision removing petitioner from the bench (Appendix 54a). It also sought a corresponding judgment declaring that it was "constitutionally impermissible" for respondents, as the New York Court of Appeals, to remove her from that position for her misconduct (Appendix 55a). Petitioner sought no relief against respondents other than that the district court review, and declare null and void, the decision and order of the New York Court of Appeals.*

Thus, regardless of the nature of the harms alleged by petitioner, the district court was without authority to hear her action, which sought only to undo the decision and final order of the New York Court of Appeals. Petitioner therefore misses the mark by arguing that the issue raised is whether her complaint stated a claim under 42 U.S.C. § 1983. Because the district court lacked authority to hear any action—regardless of its nature—seeking review of a final judicial decision of the highest court of New York State, the district court properly did not make the subsequent inquiry of whether the complaint pleaded a claim, and the court of appeals properly upheld its dismissal of the complaint.

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* The proceeding before the New York Court of Appeals was a judicial proceeding. *Coruzzi* v. *State of New Jersey*, 705 F.2d 688 (3d Cir. 1983). *See Middlesex Co. Ethics Comm.* v. *Garden State Bar Ass'n*, 457 U.S. 423 (1982) (state bar disciplinary proceeding). The state Court of Appeals' jurisdiction over that judicial proceeding is established by N.Y. Const., art. VI, § 22, and was conceded by petitioner in her complaint (Appendix 39a).

Petitioner's reliance on *Pulliam* v. *Allen*, —— U.S. ——, 104 S. Ct. 1970 (1984), is similarly misplaced. *Pulliam* held that the doctrine of judicial immunity does not bar an action for prospective injunctive relief against a state court judge. The injunctive relief sought in *Pulliam*, however, did not seek to overturn a particular order or decision in a particular state court case. Moreover, neither *Pulliam* nor any of the other cases cited by petitioner (Petition at 9-10) involved any decision by the "highest court of a state in which a decision could be had", 28 U.S.C. § 1257, and therefore no question was raised by any of those cases concerning the exclusive jurisdiction of this Court to review such decisions.

Nor is there any merit to petitioner's contention that *Rooker* and *Tang* were "grounded on" principles of *res judicata* (Petition at 10-11). *Rooker* and the many cases which followed it, including *Tang*, were based on the jurisdictional conclusion that only this Court has the authority to review final judicial determinations of the highest court of a state. *District of Columbia Court of Appeals* v. *Feldman*; *Zimmerman* v. *Grievance Committee*. The issue in those cases, like the issue here, was jurisdiction, not *res judicata*.

And, for the same reason, petitioner's argument (Petition at 11-12) about a party's standing to raise a claim has no bearing on this case. Congress, in enacting 28 U.S.C. § 1257, and this Court, in deciding *Rooker* and *Feldman*, made clear that the district courts may not entertain any action which, like this one, seeks to nullify an order of the highest court of a state. The standing of parties is not in issue where, as here, the district court lacked subject matter jurisdiction.

Petitioner contends that the Second Circuit's decision in *Zimmerman* does not apply (Petition at 13-15) because, in that case, "everything necessary for federal appellate review was present in the existing record." Petitioner is mistaken. That argument once again fails to recognize that *Zimmerman,* like this Court's decision in *Feldman,* dealt with the subject matter jurisdiction of the district court over an action seeking a particular type of relief, not the substance of the allegations made or the state of the record presented.

The petition thus entirely misses the point of the Second Circuit's decision and that of the district court it unanimously affirmed. The issue is not, and has never been, whether petitioner's complaint stated a claim.* Rather, the issue decided by both courts below was that of subject matter jurisdiction, and both courts, following precedents set by this Court, correctly held that the district court lacked jurisdiction over petitioner's action.

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* Significantly, the only allegation made in the lengthy complaint regarding race (Appendix 44a, see also 32a) was that, in view of the fact that petitioner is black, her removal by the Court of Appeals, whose members, at the time, were "all members of the white race," has raised the "appearance of racism on the part thereof." There is no allegation anywhere in the complaint that the judges of the Court of Appeals based their decision on any grounds other than those set forth in the court's opinion, *Matter of Sims,* 61 N.Y.2d 349, 474 N.Y.2d 270, 462 N.E.2d 370, *rearg. denied,* 62 N.Y.2d 943, 479 N.Y.S.2d 1028, 468 N.E.2d 56 (1984). The opinion of the state's highest court set forth in detail the findings and reasoning upon which its final determination was based. In short, the jurisdictional issue bars the action, but the bar does not foster an injustice, real or apparent.

Conclusion

The Second Circuit's summary affirmance was based upon a simple application of the established law that only this Court has the authority to review a judicial determination of the highest court of a state, and that the district courts lack such authority. This case presents no special or important reasons calling for discretionary review by this Court.

Accordingly, the petition for a writ of certiorari should be denied.

Dated: New York, New York
September 4, 1985

Respectfully submitted,

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